Supreme Court, U. S.
FILED
JUL 26 1978
MICHAEL RODAK, JR., CLERK

In The

# Supreme Court of the United States

October Term, 1977

No. **77-1833**

SUN OIL COMPANY OF PENNSYLVANIA,
*Appellant,*

*vs.*

UNEMPLOYMENT COMPENSATION BOARD OF REVIEW OF COMMONWEALTH OF PENNSYLVANIA,
*Appellee,*

and

LOCAL (8)-901 OF THE OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION on Behalf of Its Members and All Others Similarly Situated; GEORGE SWERDON, JR., ROBERT A. CROWLEY, LOUISE E. CHASSE, WILLARD A. SCHOLL, EDWARD J. FADDEN, NEANIE WILLIS, ROBERT MILLER, ANDREW MASSORELLI, ANTHONY G. ARCOMONE, IRVIN M. BUTLER, on Their Own Behalf and on Behalf of All Other Claimants Similarly Situated,
*Intervenor-Appellees.*

*On Appeal from the Supreme Court of Pennsylvania*

## MOTION TO DISMISS OR AFFIRM

BERNARD N. KATZ, ESQUIRE
MERANZE, KATZ, SPEAR & WILDERMAN
ATTORNEYS FOR INTERVENOR-APPELLEE
*Attorneys for Intervenor-Appellees*
1200 Lewis Tower Building
Philadelphia, Pennsylvania 19102
(215) KI 6-4183

1126 LUTZ APPELLATE PRINTERS, INC.
Law and Financial Printing
South River, N.J. (201) 257-6850 | New York, N.Y. (212) 840-9494 | Philadelphia, Pa. (215) 563-5587 | Washington, D.C. (202) 783-7288

## TABLE OF CONTENTS


*Page*

Motion to Dismiss or Affirm ..... 1

The State Statute Involved and the Nature of the Case ... 3

The Proceedings Below ..... 4

Argument:

I. The Pennsylvania Supreme Court decision that the Pennsylvania General Assembly has the right to allow unemployment compensation benefits to locked-out employees while denying benefits to striking employees should be affirmed. ..... 5

A. The Legislative History of the Labor Management Relations Act and the Social Security Act Evidences Congressional Intent to Leave the States Free to Establish Their Own Unemployment Compensation Policies When Employees are Out of Work Due to a Labor Dispute. ..... 5

B. This Case Should be Affirmed Because the Pennsylvania Statutory Scheme is Distinguishable From the New York Statutory Scheme Involved in *Telco*. ..... 8

II. In the alternative, the decision to accept jurisdiction in this case should be deferred until after *Telco* is decided. ..... 10

III. If the Court decides to take jurisdiction of this case, it should be heard simultaneously with *Telco* in order to resolve both matters expeditiously. ..... 11

Conclusion ..... 12

Contents

Page

## TABLE OF CITATIONS

**Cases Cited:**

California Department of Human Resources Development v. Java, 402 U.S. 121 (1971) ..... 11

Equitable Life Assurance Society v. Brown, 187 U.S. 308 ... 10

Grinnell Corp. v. Hackett, 475 F.2d 449 (1973), cert. denied, 94 S. Ct. 164 (1973) ..... 7

New York Telephone Company v. New York Department of Labor, 566 F.2d 388 (2d Cir. 1977), cert. granted, ___ U.S. ___, 98 S. Ct. 1519 (1978) ..... 5, 8, 9, 10, 11

Unemployment Compensation Board of Review v. Budzanoski, 346 A.2d 864 (Pa. Cmwlth. 1975) ..... 3

**Statutes Cited:**

Food Stamp Act of 1964, as amended, 7 U.S.C. §2011 et seq. . 7

Labor Management Relations Act, 1947, 29 U.S.C. §141 et seq. .....3, 5, 6, 7, 8, 10, 11

Pennsylvania Unemployment Compensation Law, Section 402(d), Pa. Stat. Ann. Tit. 43 §802(d) §752 ..... 3, 9

Railroad Unemployment Insurance Act, as amended, 45 U.S.C. §351 et seq. ..... 7

Social Security Act of 1935, as amended:

§903(a)(5)(A), 42 U.S.C. §1103(a)(5)(A) ..... 7



Contents

Page

§303(a)(1) 42 U.S.C. §503(a)(1) ..... 11

Title III, 42 U.S.C. §501 et seq. ..... 3, 6, 8, 10, 11

Title IX, 42 U.S.C. §1101 et seq. ..... 3, 6, 8, 10, 11

New York Labor Law §590.9, §592.1 (McKinney 1977) ..... 9

**Other Authorities Cited:**

House Doc. No. 81, 74th Cong., 1st Sess. ..... 6

Senate Rep. No. 628, 74th Cong., 1st Sess. ..... 6

79 Cong. Rec. 5782 ..... 6, 7

79 Cong. Rec. 9284 ..... 7

115 Cong. Rec. 34106 ..... 7

House Conf. Rep. No. 1908, 90th Cong., 2d Sess. ..... 7

In The

# Supreme Court of the United States

October Term, 1977

No.

SUN OIL COMPANY OF PENNSYLVANIA,
*Appellant,*

*vs.*

UNEMPLOYMENT COMPENSATION BOARD OF REVIEW OF COMMONWEALTH OF PENNSYLVANIA,
*Appellee,*

and

LOCAL (8)-901 OF THE OIL, CHEMICAL AND ATOMIC WORKERS INTERNATIONAL UNION on Behalf of Its Members and All Others Similarly Situated; GEORGE SWERDON, JR., ROBERT A. CROWLEY, LOUISE E. CHASSE, WILLARD A. SCHOLL, EDWARD J. FADDEN, NEANIE WILLIS, ROBERT MILLER, ANDREW MASSORELLI, ANTHONY G. ARCOMONE, IRVIN M. BUTLER, on Their Own Behalf and on Behalf of All Other Claimants Similarly Situated,
*Intervenor-Appellees.*

*On Appeal From the Supreme Court of Pennsylvania*

## MOTION TO DISMISS OR AFFIRM

Appellees move this Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Pennsylvania Supreme Court on the grounds that the question on which the decision of the cause rests is so unsubstantial as not to need

further argument and the decision of the Pennsylvania Supreme Court is clearly correct.

Respectfully submitted,

WARREN J. BORISH
MERANZE, KATZ, SPEAR
& WILDERMAN
*Attorneys for Intervenor-Appellees*
1200 Lewis Tower Building
Philadelphia, Pennsylvania 19102
(215) KI6-4183



## THE STATE STATUTE INVOLVED AND THE NATURE OF THE CASE

This appeal raises the question of the validity of certain provisions of the Pennsylvania Unemployment Compensation Law, Pennsylvania Stat. Ann. Tit. 43, §802(d), providing for the payment of unemployment compensation benefits to locked-out employees.

The appellant, Sun Oil Company of Pennsylvania, contends that this state statute is unconstitutional. It argues that the award of unemployment compensation benefits by the Commonwealth to locked-out employees and the assessment of additional unemployment compensation taxes against an employer impermissibly interferes with the national labor policy mandating state neutrality in labor disputes.

The appellee, Local (8)-901 of the Oil, Chemical and Atomic Workers International Union, asserts that the Commonwealth's decision to award benefits is a proper exercise of its police power and conflicts with no provision of federal law. A careful study of the congresional policy underlying Titles III and IX of the Social Security Act of 1935, 42 U.S.C. §§501 *et seq.*, 1101 *et seq.* which creates the national unemployment compensation program, clearly indicates congressional intent to leave the states free to establish their own policies regarding the unemployment compensation eligibility of employees who are out of work because of labor disputes. Furthermore, the system of collective bargaining created by the Labor Management Relations Act, 29 U.S.C. §141 *et seq.*, does not necessitate governmental neutrality in other areas of labor relations, so that locked-out employees may be paid benefits pursuant to state programs. Finally, it must be emphasized that the Pennsylvania statute does not allow payment of benefits to strikers — but only to persons unemployed "involuntarily" and "through no fault of their own." *Unemployment Compensation Board of Review v. Budzanoski,* 346 A.2d 864 (Pa. Cmwlth. 1975). Thus the federal

labor laws do not prevent the Pennsylvania Legislature from deciding that the public interest of the state will be served by the payment of unemployment compensation to all who lose their jobs through no fault of their own, including locked-out employees.

## THE PROCEEDINGS BELOW

Appellees applied to receive unemployment compensation benefits pursuant to Pennsylvania law. Appellant instituted this action challenging the Commonwealth's authority to award such benefits to applicants involved in a labor dispute.

Sun Oil Company of Pennsylvania now appeals from the decision of the Pennsylvania Supreme Court affirming the decisions of the Commonwealth Court of Pennsylvania, No. 1037 C.D. 1974 and the Unemployment Compensation Board of Review, which awarded unemployment compensation benefits to the membership of Local (8)-901 of the Oil, Chemical & Atomic Workers International Union, and found that the Commonwealth had the right to award such benefits.



## ARGUMENT

### I.

### THE PENNSYLVANIA SUPREME COURT DECISION THAT THE PENNSYLVANIA GENERAL ASSEMBLY HAS THE RIGHT TO ALLOW UNEMPLOYMENT COMPENSATION BENEFITS TO LOCKED-OUT EMPLOYEES WHILE DENYING BENEFITS TO STRIKING EMPLOYEES SHOULD BE AFFIRMED.

#### A. The Legislative History of the Labor Management Relations Act and the Social Security Act Evidences Congressional Intent to Leave the States Free to Establish Their Own Unemployment Compensation Policies When Employees are Out of Work Due to a Labor Dispute.

The Court faces the question of whether Congress intended to prohibit state unemployment compensation laws which provide benefits to those who lose their jobs through no fault of their own, including locked-out employees, or whether it intended to leave the states free to regulate in this area.

The Court faces a similar issue in *New York Telephone Company v. New York State Department of Labor*, 566 F.2d 388 (2d. Cir. 1977), *cert. granted*, ____ U.S. ____, 98 S. Ct. 1519 (1978) (hereinafter "Telco").[1]

Nevertheless, it is respectfully suggested that the instant case is distinguishable and therefore, should be affirmed.

Appellee urges that the question is not one of federal pre-emption, but rather of a balancing of two equally important and viable federal policies. One policy, as reflected by the Social Security Act, delegates responsibility to the state to set up

---

1. See the discussion below at I.B.

unemployment compensation programs. The other policy, as reflected by the Labor Management Relations Act (LMRA), 29 U.S.C. §141, *et seq.* establishes a comprehensive statutory code for industrial-labor relations. The pertinent provisions of the Social Security Act deal with the conditions of eligibility for state unemployment compensation programs, whereas the LMRA has nothing to do with public assistance or unemployment compensation benefits. Therefore, the Social Security Act should be treated as the governing law.

A review of the relevant legislative history justifies this conclusion. Congress's initial decision not to restrict states in determining unemployment compensation eligibility has never been changed — even though Congress has had several opportunities. In addition, the congressional conception of government neutrality in the labor field does not warrant the conclusion that Congress intended the labor market to be completely free of all governmental influence.

The present concern is with the alleged conflict of two federal policies: the national labor policies, reflected by the LMRA, and the national unemployment compensation policies, as reflected by Titles III and IX of the Social Security Act of 1935.

Under the Social Security Act, states obtain federal funds for the payment of unemployment compensation benefits if they adopt unemployment compensation laws which are approved by the Social Security Board. Neither at the time of adoption of this Act, nor at any time since, has Congress restricted the states in their determination of the eligibility of those out of work due to labor disputes. In fact, numerous references are made in congressional reports and records that ". . . the states shall have broad freedom to set up the type of unemployment compensation they wish . . ." H. Doc. No. 81, 74th Cong., 1st Sess. pp. 13, 16. See also S. Rep. No. 628, 74th Cong., 1st Sess. p. 4; 79 Congressional Record 5782 (1935) (Remarks of



Congressman Cooper); 79 Congressional Record 9284 (Remarks of Congressman Wagner); 115 Congressional Record 34106 (1969) (Remarks of Congressman Mills).

Such clear congressional statements of policy clearly refute appellant's basic argument that the LMRA pre-empts such programs as challenged herein.

The conclusion that Congress did not intend federal labor law to restrict the states in their creation of unemployment programs is reinforced when one looks at other programs created by Congress. It was implicit in the original National Labor Relations Act (NLRA) of 1935 that other governmental programs would necessarily have some influence on the labor market. For example, Section 903(a)(5)(A) of the Social Security Act itself, forbids workers from eligibility for unemployment compensation benefits for refusing to accept new work "if the position offered is vacant due directly to a strike, lockout, or other labor dispute." The Railroad Unemployment Insurance Act, 45 U.S.C. §351 *et seq.*, provides compensation for strikers under specified conditions. And the Food Stamp Act of 1964, 7 U.S.C. §2011, *et seq.*, makes eligibility dependent upon state agency determination.[2] Such legislation further reinforces the obvious conclusion that additional governmental influence on the labor market was not precluded by the LMRA.

In determining congressional intent, "Congressional awareness, [of the LMRA's compatability with other legislation which influences the labor market], the availability of opportunities to act, and Congressional inaction in closely related matters, are also relevant . . ." *Grinnel Corp. v. Hackett*, 475 F.2d 449, *cert. denied*, 414 U.S. 858 (1973).

---

2. It is important to note that an amendment to bar receipt of food stamps by striking workers was rejected by the Senate. H. Conf. Rep. No. 1908, 90th Cong., 2d Sess., at 2. A similiar amendment to the program of aid to families with dependent children was also rejected.

Obviously, Congress has been aware of the controversy concerning the payment of any kind of benefits to workers involved in a labor dispute.

Neverthless, it has refrained from enacting any prohibition against such benefits, even though the Social Security Act and the Labor Management Relations Act[3] have been amended several times.

Thus it can only be concluded that Congress did not intend the Labor Management Relations Act to usurp state power to create an unemployment compensation law.[4]

**B. This Case Should be Affirmed Because the Pennsylvania Statutory Scheme is Distinguishable From the New York Statutory Scheme Involved in *Telco*.**

The issue in *New York Telephone Company v. New York State Department of Labor*, 566 F.2d 388 (2d. Cir. 1977), *cert.*

3. A provision depriving strikers of the right to collect unemployment compensation was eliminated from the final version of the Labor Management Relations Act of 1947, NLRB legislative history of the Labor Management Relations Act, 1947, at 303-304.

4. Sun Oil has presented an argument in this appeal which has not been previously raised below. It argues that the Unemployment Compensation Board's determination of what constitutes a lockout is an unconstitutional interference with its federally protected rights guaranteed by the National Labor Relations Act. This argument is easily disposed of using the same analysis presented above. Congress did not intend the field of unemployment compensation to be unregulated. Regulation of this area was delegated to the states. Congress chose not to limit the states in their performance of this responsibility. Therefore, a determination by the State Unemployment Compensation Board applying the state statutory scheme is within the Board's delegated duties. Sun Oil has not been deprived of any right it may possess to lockout employees, nor has Sun Oil been forced to agree to any type of proposal. The state is merely granting unemployment compensation benefits to those it deems eligible therefor, pursuant to the authority delegated to it by the Social Security Act.



*granted*, ____ U.S. ____, 98 S. Ct. 1519 (1978) is the constitutionality of New York's unemployment compensation statute. That statute permits employees who are involved in a "strike, lockout, or other industrial controversy" to collect unemployment compensation after a waiting period of 8 weeks. New York Labor Law §590.9, §592.1 (McKinney 1977).

The statute challenged in the instant case is distinguishable from the *Telco* statute.

While the New York statute grants benefits to all strikers, the Pennsylvania statute grants benefits only to locked-out employees. Pennsylvania Unemployment Compensation Law, §402(d), Pa. Stat. Ann. Tit. 43 §802(d). The Pennsylvania General Assembly's statement of the purpose of this law manifests their intent to provide an income to persons unemployed "involuntarily" and "through no fault of their own". Unemployment Compensation Law, §3, 43 Pa. Stat. Annot. §752. This difference in the statutes is reflected in their impact on the labor market. The argument that the New York statute forces an employer engaged in collective bargaining to subsidize the union's ultimate economic weapon — the strike — is inapplicable to the Pennsylvania statute. Another argument inapplicable to the instant case is that the New York statute encourages a continuation of striking and strengthens the union's bargaining position. The Pennsylvania employees did not strike, didn't wish to strike, and in fact were anxious to return to work. Their bargaining position was not strengthened by granting them unemployment benefits, which are but a small portion of their weekly salary. The payment of benefits did not encourage the continuation of the strike. These employees wanted to return to work; it was their employer who barred their return.

Upon the challenged statute, the Commonwealth of Pennsylvania remains neutral in all such labor disputes. Employers are not deprived of their right to lockout. The

Commonwealth acts merely to protect all of its citizens from the serious menace to health, morals and welfare due to unemployment.

The distinction between those unemployed through no fault of their own and those unemployed by choice minimizes any possible effect on the labor market and distinguishes the Pennsylvania statute from the New York statute. This distinction, viewed in light of all of the arguments advanced previously, further supports appellee's position that the decision below should be summarily affirmed and that jurisdiction should not be accepted.

## II.

## IN THE ALTERNATIVE, THE DECISION TO ACCEPT JURISDICTION IN THIS CASE SHOULD BE DEFERRED UNTIL AFTER *TELCO* IS DECIDED.

If the Court decides not to affirm this case, any jurisdictional decision should be deferred until after the *Telco* decision. The presence of a substantial federal question is essential to the jurisdiction of the Supreme Court. A federal question cannot be so explicitly foreclosed by a prior decision of the Supreme Court as to leave no room for real controversy. *Equitable Life Assurance Society v. Brown,* 187 U.S. 308.

The arguments advanced in support of the constitutionality of both the New York statute and the Pennsylvania statute are premised in part on an interpretation of congressional intent in enacting the Labor Management Relations Act and the Social Security Act. Therefore, if the New York statute is upheld on the basis of the Court's analysis of congressional intent, the substantiality of the federal question in *Sun Oil* will be foreclosed, and the Supreme Court will be forced to dismiss this case for lack of a substantial federal question. On the other hand, if the New York statute is held to be unconstitutional, *Sun*



*Oil* must be heard on its own merits due to the differences in statutory schemes (as discussed above).

## III.

## IF THE COURT DECIDES TO TAKE JURISDICTION OF THIS CASE, IT SHOULD BE HEARD SIMULTANEOUSLY WITH *TELCO* IN ORDER TO RESOLVE BOTH MATTERS EXPEDITIOUSLY.[5]

Although there are factors unique to each case, in both *Telco* and *Sun Oil* the Court must analyze the legislative intent behind the LMRA and the Social Security Act. Both cases should be heard together in the interests of economy, expedience and avoidance of duplication.

Appellees are particularly interested in expedience since they filed for benefits more than five (5) years ago. Quick resolution of this issue is also a concern of the Court. In *California Department of Human Resources Development v. Java,* 402 U.S. 121 (1971), this Court held that §303(a)(1) of the Social Security Act, 42 U.S.C. §503(a)(1) requires that states pay unemployment insurance benefits *immediately* after the initial administrative determination of a claimant's eligibility. The mandate of *Java* has not been lived up to here, and appellees still await receipt of their benefits. Therefore, it would be in the best interests of both the Court and appellees to hear both cases together and resolve this matter as soon as possible.

---

5. As indicated in argument I.B, the Pennsylvania statutory scheme is different from the New York statutory scheme. Therefore, if the Court finds in *Telco* that the New York statute is unconstitutional, this case must be heard on its own merits.

## CONCLUSION

The Pennsylvania Supreme Court's holding that the Pennsylvania General Assembly has the right to allow unemployment compensation benefits to locked-out employees while denying benefits to striking employees is obviously correct. Furthermore, the questions upon which this cause depend are so unsubstantial as not to need further argument. Therefore, appellee respectfully moves the Court to dismiss this appeal or, in the alternative, to affirm the judgment of the Pennsylvania Supreme Court.

Respectfully submitted,

s/ Warren J. Borish

**MERANZE, KATZ, SPEAR & WILDERMAN**

***Attorneys for Intervenor-Appellees, Local (8)-901 of the Oil, Chemical & Atomic Workers International Union and Claimants***